Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Tariff Filing Requirements for	)	CC Docket No. 93-36
Nondominant Common Carriers	)	

TO: THE COMMISSION

GTE'S REPLY COMMENTS

GTE Service Corporation, on behalf of
its affiliated telephone operating,
satellite and cellular service companies

Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

THEIR ATTORNEY

April 19, 1993

TABLE OF CONTENTS

SUMMARY

GTE strongly supports the regulatory relief proposed in the Notice when it is applied equitably in competitive markets for competitive services. Carrier classification that is not based on marketplace realities, however, should not be the basis for determining when to apply streamlined regulation. GTE urges the Commission to reduce regulation by examining market conditions, rather than presuming dominance based on carrier classification. In those markets where certain services are highly competitive, the Commission should immediately undertake a review of the market structure and apply streamlined regulation to those services found to be competitive.

Streamlined regulation has promoted competition in the marketplace and has served the public interest. Those services that have been operating without tariff regulation, such as cellular, paging and satellite services, have shown how effectively the competitive marketplace replaces regulation. The Commission's proposed further streamlined regulation will allow those services to continue with minimal disruption.

GTE agrees with those parties supporting the one-day notice period and further streamlining of the tariff format that would ease the burden on carriers required to file tariffs. While the Commission can permit carriers to file a maximum or range of rates, rates filed by nondominant carriers must still be just, reasonable and nondiscriminatory. In a competitive environment, the regulatory process should not be a mechanism for delaying the introduction of competitors' new service offerings.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Tariff Filing Requirements for	)	CC Docket No. 93-36
Nondominant Common Carriers	)	

TO: THE COMMISSION

GTE'S REPLY COMMENTS

GTE Service Corporation, on behalf of its affiliated telephone operating companies, satellite and cellular service companies ("GTE")[1] hereby submits its replies to comments on the Commission's Notice of Proposed Rulemaking, FCC 93-103, released February 19, 1993 ("NPRM" or "Notice"), in the above-captioned proceeding.

INTRODUCTION

The NPRM proposes to further streamline tariff filing requirements for nondominant interstate common carriers in response to the Court of Appeals decision[2] overturning the Commission's permissive detariffing policy.[3] The

---

1 GTE Telephone Operating Companies, GTE Spacenet Corporation, GTE Mobilnet Incorporated and Contel Cellular Inc.

2 AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992).

3 Permissive detariffing was established in Policy and Rules Concerning the Rates for Competitive Carrier Services and Facilities Authorizations Therefor, Fourth Report and Order, CC Docket No. 79-252, 95 FCC 2d 554 (1983) ("Fourth Report and Order").

result, that all interstate common carriers are now required to file tariffs, creates a burden on not only those common carriers that previously were not required to file tariffs, but on the Commission who will now be required to review and handle those tariffs. The Commission tentatively concludes "that existing tariff regulation of nondominant carriers inhibits price competition, service innovation, entry into the market, and the ability of firms to respond quickly to market trends."[4] Thus, the Commission initiated "this rulemaking proceeding in order to consider easing in the near term the tariff filing requirements for nondominant carriers in a manner consistent with the Act."[5]

Taking the position that the portion of the Fourth Report and Order that applied streamlined regulation to nondominant carriers[6] was not affected by the Court's decision, the Commission proposes to allow nondominant interstate common carriers to file tariffs with a one day notice period, to state only a maximum or a range of rates and to use a simplified filing format.[7] The Commission also asks parties to comment of the legality on the proposed action.[8]

I. STREAMLINED TARIFF REQUIREMENTS PROMOTE COMPETITION WHEN APPLIED EQUALLY IN COMPETITIVE MARKETS FOR COMPETITIVE SERVICES.

GTE has been a long-standing supporter of streamlined regulation when it

---

4 NPRM at ¶12.

5 Id.

6 See Fourth Report and Order, 95 FCC 2d at 557-82.

7 Id.

8 Id. at ¶¶19, 23.

is applied in a fair and equitable manner to all market participants.[9] Streamlined regulation has promoted competition in the marketplace and has served the public interest.[10] In prior proceedings, GTE concurred in the Commission's efforts to minimize regulation, preferring instead to allow competitive market forces to provide consumers with the widest available range of services at market-based prices.[11] It is time, however, for the Commission to recognize that the classification of a carrier should not be the sole basis for determining when to apply streamlined regulation.

GTE agrees with Bell Atlantic and SWBT[12] that the concept of dominant versus nondominant is no longer relevant. Carrier classification that is not based on marketplace realities cannot, and should not, be the basis used to require one participant to meet full regulatory requirements, while offering extensive relief to its competitors. The Commission has historically classified carriers on a macro-level, basing dominant or nondominant status on broad market segments or even traditional associations. For example, at the time of the AT&T divestiture, AT&T, its associated Bell Operating Companies and all other LECs

---

9 See GTE's Reply Comments, Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-213, filed March 19, 1993, at 22; GTE's Comments, Expanded Interconnection with Local Telephone Company Facilities, Second Notice of Proposed Rulemaking, CC Docket No. 91-141 Transport Phases I and II, filed January 14, 1993, at 12-13.

10 GTE has supported CTIA's Petition for a declaration that cellular providers are to be accorded the maximum streamlined regulatory treatment. See Comments of GTE Mobile Communications, RM 8179, filed Mar. 19, 1993.

11 See Comments of GTE Service Corporation, Tariff Filing Requirements for Interstate Common Carriers, Notice of Proposed Rulemaking, CC Docket No. 92-13, ("Forbearance Docket"), filed March 30, 1992, at 24.

12 Bell Atlantic at 5 and SWBT at 9.

were classified as dominant. All other common carriers were treated as nondominant.

Taking a step away from this traditional classification in CC Docket No. 90-132, the Commission used a market analysis approach to determine dominance and appropriately provided AT&T regulatory relief in competitive markets.[13] The Commission based its decision on market share and concentration, supply capacity and demand elasticity of customers, as well as relative cost structures and resources of suppliers. While a step forward, AT&T still had to demonstrate that its entire business services market was subject to competition even though some services and some areas had been subject to heavy competition for some time. GTE urges the Commission to move forward on this path to reduced regulation by examining market conditions, rather than presuming dominance based on carrier classification.

LECs have always been presumed dominant despite the fact that for a significant number of LECs' services, just as for certain AT&T services, there is vigorous competition from a growing number of competitors. Despite the claims of the Competitive Access Providers ("CAPs") that LECs merit vigilant regulation, because they are insulated from market pressures,[14] and continued tariff regulation, because of their overwhelming market power,[15] GTE has illustrated the extent of CAP penetration into the profitable local exchange markets in numerous filings.[16] GTE agrees with Bell Atlantic that should the Commission

---

13 Competition in the Interstate Interexchange Marketplace, Report and Order, CC Docket No. 90-132, 6 FCC Rcd 5880 (1991).

14 ALTS at 4 and MFS at 5.

15 MFS at 5.

16 See, e.g., GTE's Reply Comments, Transport Rate Structure and Pricing, Report and Order and Further Notice of Proposed Rulemaking, CC

permit CAPs free rein and continue to keep "LECs on a tight regulatory tether, it will have decided as a matter of national policy that the incumbent LECs should lose the choicest portions of the competitive marketplace to new entrants."[17]

Markets should be defined in terms of customer and product characteristics and the cross elasticities of supply and demand.[18] Regulation should match the degree of competition in particular markets. As SWBT states, "the public interest would be served by streamlining . . . all regulation of companies providing services that experience competition."[19] Unless the Commission ultimately treats all providers in competitive markets equally, the Commission's existing and proposed further streamlined rules would maintain a pluralistic supply of providers, not true competition, to the detriment the consumer.

In the past, competitive markets, such as those for cellular, satellite and interstate toll services, have flourished under permissive detariffing for all participants without the burden of tariff regulation. Consumers have benefited in these markets. SWBT's example of the success of the Commission's decision to allow equal regulation in the cellular industry illustrates that a competitive marketplace is capable of producing "significant reductions in consumer prices

---

Docket No. 91-213, filed March 19, 1993, at 21; GTE's Comments, Expanded Interconnection with Local Telephone Company Facilities, Second Notice of Proposed Rulemaking, CC Docket No. 91-141 Transport Phases I and II, filed January 14, 1993, at 5-8; GTE's Comments, Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, CC Docket No. 92-256, filed February 22, 1993, at 11-15.

17 Bell Atlantic at 4-5.

18 Bell Atlantic at 1, BellSouth at 8, SWBT at 9, Pacific at 10-11.

19 SWBT at 2.

and vast and rapid developments in consumer service options."[20] Unless all competitors are subject to the same regulation in competitive markets, an artificial pricing umbrella is created which distorts competition, results in inefficient resource use and prevents customers from fully realizing benefits available from the competitive market.

Offering regulatory relief to a subset or class of competitors while preventing another competitor from receiving equal relief in the relevant market is not only patently unfair, but also results in disruptions in the marketplace and inefficient prices. Advantaging one group of competitors with streamlined rules will affect its market strategies, particularly if its competitor must make full public disclosure of its costs and file detailed tariffs with lengthy notice periods. GTE agrees with SWBT that "[h]andicapping incumbent providers is not likely to facilitate continued development of competition, but it is sure to limit further customer choice and all marketplace stimulus for innovation."[21]

The better approach is to apply the same streamlined regulatory rules to all competitors for similar services in the same market; i.e., defining rules in terms of market and services, not providers. GTE believes that the Commission should move in the direction of reducing regulation when competition is present.

This is not to say that the Commission should abrogate its statutory duty to regulate noncompetitive markets. When subscribers do not have a choice of providers for an essential service, regulation usually is warranted. In such cases, market forces to push price toward cost or to ensure availability are lacking and regulation must step in. The relevant question once again centers on what are the conditions for that service in a particular market. Classification

---

20 Id. at 3.

21 Id. at 7.

of a carrier with a broad umbrella of services, both competitive and noncompetitive, is an inappropriate basis for determining whether to grant regulatory relief or impose regulation. The reality of marketplace circumstances must be considered in determining the appropriateness of regulation. Regulation is only necessary when there are captive customers who must buy service in a market with no competitors. GTE believes that the same streamlined regulatory rules should be applied to all competitors based on specifics of the services and the markets under consideration.

II. THE COMMISSION IS ACTING WITHIN ITS AUTHORITY TO FURTHER STREAMLINE TARIFF FILING REQUIREMENTS.

1. The one-day notice period is legal and best serves a competitive environment.

GTE supports the one-day notice period. GTE agrees with the Commission that a major problem with the existing 14 day advance notice period is that it "allows competitors time to begin, and possibly complete, development and implementation of a market response before the tariff becomes effective."[22] GTE also agrees with MCI that "the public interest in the prompt availability of new services and rates would be served" if tariff changes could be made more rapidly.[23] The competitive impact of the notice period is critical to traditional providers as well as so-called "nondominant" new entrants.

BellSouth suggests that if the Commission's "conclusions are true with respect to nondominant carriers' filings, then they are no less true with respect to tariff filings of other carriers where the service at issue is a competitive one."[24]

---

22 NPRM at ¶15.

23 MCI at 5.

24 BellSouth at 5.

GTE agrees that "when a LEC is required to file its new service and restructured service offerings on 45 days notice . . . this notice period not only provides competitors with more than ample opportunity to develop a response, but it also delays the LECs' ability to introduce the service to the marketplace."

Virtually all carriers agree that the Commission is lawfully acting within the constraints of Section 203 of the Communications Act ("the Act")[25] in shortening the notice period to one day.[26] Most of the parties[27] objecting to the one-day notice oppose it only for rate increases and/or language changes that affect long-term contracts, not for rate decreases or new services. GTE agrees with those parties supporting the one-day notice period. There is nothing in Section 203 that requires the Commission to specify a longer period.

In a competitive environment, long notice periods allow a party to use the regulatory process as a stalling tactic to delay the introduction of competitors' new service offerings. This dilatory effect is adverse both to the interest of the consumer and the promotion of competition. In a competitive environment, market forces will ensure just and reasonable rates or the service will have no takers. In addition, the Commission has many other regulatory tools, such as Section 208, to protect against carrier abuses.

---

25 47 U.S.C. §203.

26 APCC at 5, RCI at 6, Commenters at 8, Bell Atlantic at 10, SWBT at 15, AT&T at 3, ALTS at 5, MFS at 8, Sprint at 15, Pilgrim at 5, GCI at 3, Telocator at 7-8, ELI at 3, Avis at 4, ITAA at 2, TRA at 4, LOCATE at 5, CompTel at 2-3. Although not specifically addressing the lawfulness of this proposal, the following parties supported it: ICA at 2, BellSouth at 8, CTIA at 2, Century at 2, GE Americom at 2, RGT at 2, TCG at 3, LinkUSA at 2, MCI at 5-6, Ameritech at 3.

27 Networks at 3, ARINC at 7, MMR at 3-5, TCA at 7-8, Ad Hoc at 5.

2. Further streamlining of the tariff filing format is lawful and in the best interest of all parties required to file tariffs.

Further streamlining of the tariff format is another point that almost all commenters agree is permitted by Section 203, and benefits all concerned parties.[28] GTE agrees that the proposal would lawfully implement format changes that would ease the burden on carriers required to file tariffs. GTE urges the Commission to adopt the proposed tariff format changes.

Several parties,[29] citing hardships, object to the proposal to require 3½ inch diskettes, in a MS DOS 5.0, WordPerfect 5.1 format,[30] and to restrict referencing other tariffs.[31] McCaw asks the Commission to clarify what "information required" under the Act includes.[32]

Since the Commission is attempting to ease the burdens, GTE urges the Commission to allow parties to file on paper, as is currently done, or to file diskettes in ASCII format. This format should be accessible to almost every party. In addition, to resolve uncertainty about "information required" under the Act, the Commission should make every effort to clarify the minimum filing

---

28 Bell Atlantic at 10, BellSouth at 6-7, SWBT at 17, Pacific at 3-7, Ameritech at 3, AT&T at 13, MCI at 6, CompTel at 11, Pilgrim at 4, GCI at 1, LOCATE at 1, GE Americom at 2, CTIA at 2, RCI at 2, McCaw at 4, Commenters at 9, Telocator at 7, RGT at 3, TRA at 6, Avis at 3, ELI at 1, ALTS at 2, APCC at 3, MFS at 11, LinkUSA at 4, ITAA at 4, TCA at 6, Ad Hoc at 4.

29 Sprint at 13, TRA at 6.

30 NPRM, Appendix A, p. A-2, §61.22(a).

31 McCaw at 5, Commenters at 12, Avis at 7, LinkUSA at 5-6.

32 McCaw at 4.

requirements in order to avoid receiving tariffs without adequate information and to minimize challenges by competitors over the adequacy of a filing.

3. The Communications Act allows the Commission to permit the filing of a maximum rate or a range of rates.

The commenting parties present varied views on the legality of the proposal to allow nondominant interstate common carriers to file a maximum rate or a range of rates, instead of a specific rate.[33] Section 203 of the Act requires all common carriers to file "schedules of charges" but also gives the Commission some discretion to "modify any requirement" made by that section. The question is whether this statutory authority is flexible enough to permit a maximum rate or a range of rates.

GTE believes that the Communications Act allows the Commission to permit carriers to file a maximum or range of rates. But Section 203 must be interpreted in conjunction with Sections 201 and 202 of the Act. Rates filed by nondominant carriers must still be just and reasonable and nondiscriminatory. Should the Commission adopt a maximum or range of rates, GTE urges the Commission to confirm its commitment to assuring that such rates comply with these requirements of the Act.

---

[33] Nondominant carriers and most users commenting agree that the Commission is authorized to permit a maximum or range of rates. See Sprint at 7, MCI at 11-14, CompTel at 7, Pilgrim at 4, Teleport at 2, GCI at 4-5, LOCATE at 7, GE Americom at 2, Century at 2, CTIA 2, RCI at 2, McCaw at 2, Commenters at 10, Telocator at 7, RGT at 3, TRA 4, Avis at 6, ELI at 1, ALTS at 8, APCC at 5, MFS at 10, ICA at 2, ITAA at 4, TCA at 6, Ad Hoc at 4. AT&T argues vociferously against the legality of this proposal, as do some LECs. See Bell Atlantic at 8-10, Pacific at 11-12, NYNEX at 6, NTCA at 2-3.

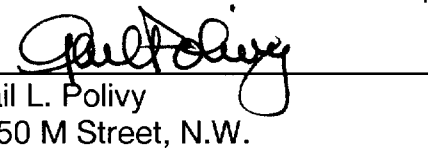
CONCLUSION

GTE strongly supports the regulatory relief proposed in the Notice when it is applied equitably in competitive markets for competitive services. Those services that have been operating without tariff regulation, such as cellular, paging and satellite services, have shown how effectively the competitive marketplace replaces regulation. The Commission's proposed streamlined regulation will allow those services to continue with minimal disruption.

But the Commission should not stop there. Streamlined regulation should also be permitted for all services for which there are competitive providers. Streamlined tariff requirements will best promote competition if applied equally to all providers. In those markets where certain services are highly competitive, such as access services in major metropolitan areas, the Commission should immediately undertake a review of the market structure. If these services are found to be competitive, streamlined regulation should be promptly adopted. This review, however, should not delay the application of streamlined regulation for obviously competitive services such as cellular and interstate toll resale.

Respectfully submitted,

GTE Service Corporation, on behalf of
its affiliated telephone operating,
satellite and cellular service companies

By 

Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

April 19, 1993

THEIR ATTORNEY

Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "GTE's Reply Comments" have been mailed by first class United States mail, postage prepaid, on this 19th day of April, 1993 to all parties of record.

Ann D. Berkowitz